PROCLAMATION

BY THE

Governor of the State of Texas

NO. 41-188

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I am vetoing and filing with the Secretary of State Senate Bill No. 197, passed by the recently adjourned Regular Session of the Forty-ninth Legislature.

The Legislature has attempted to construe Section 10, Article 8 of the State Constitution. The attempt to construe such Section is that the Legislature has declared that the War is a great public calamity in all counties, cities and towns of this State within the terms and provisions of said Section 10, Article 8. Generally speaking, the Legislature has no authority to interpret or declare a matter of constitutional construction, nor may it set aside a construction of constitutional provision, which has become fixed and settled by judicial determination. Aside from the special limitation of the Constitution, the Legislature cannot exercise powers which are in their nature essentially judicial or executive. These are by the Constitution distributed to other departments of the Government (Powell v. State, 17 Tex. Ct. App. 345; Davis v. Davis, 34 Tex. 17). The Legislature has no authority by statutory enactment or otherwise, to alter, abridge, or construe any part of the Constitution, except wherein there is express authority so to do. In the case of Jones v. Williams, 45 S. W. (2d) 130, the Supreme Court of this State has construed Section 10, Article 8 of the Constitution and the Legislature, by S. B. No. 197 is attempting to construe said provision in a manner different from that which the Supreme Court has construed said Section. As above stated, the Legislature has no authority to interpret or declare a matter of constitutional construction which has become fixed and settled by judicial determination.

Said Senate Bill No. 197 violates the provisions of Section 55, Article III of the State Constitution which provides, "The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State, or to any county or other municipal corporation therein."

Poll Taxes for the year 1944 are liabilities or obligations due the State, and such are released by said Act which is in direct contravention of said Section 55, Article III of the Constitution.

Said Senate Bill No. 197 violates Section 3, Article 7 of the Constitution. Section 3 of Article 7, provides in part, "one-fourth of the revenue derived from the State occupation taxes and poll tax of $1.00 on every inhabitant of the State between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the Public Free Schools." This one dollar poll tax is levied by the Constitution (Solon v. State, 114 S. W. (2d) 359; Powell v. City of Baird, 128 S. W. (2d) 786). Therefore, the attempt to release such poll tax by said Senate Bill is in direct violation of said provision of the Constitution.

Said Senate Bill No. 197 violates the provisions of Section 6 of Article 5 of the State Constitution. The Act provides that the District Court, the Court of Civil Appeals and the Supreme Court shall have concurrent jurisdiction in mandamus proceedings. The Act further provides that no appeal shall lie from the District Courts in such proceedings. Section 6 of Article 5 of the Constitution provides in part, "Said Court of Civil Appeals shall have appellate jurisdiction co-extensive within the limits of their respective districts, which shall extend to all civil cases of which the district Courts or county Courts have original or appellate jurisdiction, under the strict restrictions and regulations that may be prescribed by law. Provided, that the decision of such Courts shall be conclusive from all questions of facts brought before them on appeal or error."

It is stated in Texas Jurisprudence, Vol. 28, p. 517, "Mandamus is commonly spoken of as an extra-ordinary remedy. According to many of the cases it is a civil suit." (citing a number of authorities holding that such a proceeding is a civil suit.)

It is further stated in Texas Jurisprudence, Vol 28, p. 653, "A final judgment of the district court awarding a peremptory writ of mandamus is appealable, but of course, a mere interlocutory order is not. Thus an order of the district court, granting a writ as a mere ancillary process in a pending suit, is not a final judgment from which an appeal will lie. But when the writ is issued in response to an

independent cause of action, based upon a filed petition, and the judgment disposes of all matters in controversy as to all the parties to the suit, the judgment is final, and an appeal will lie."

When the District Court issues a writ of mandamus under the Act under consideration such writ is issued in response to an independent cause of action, based upon a filed petition, and the judgment disposes of all matters in controversy as to all the parties to the suit, the judgment is final, and an appeal will lie. Therefore, the said Act contravenes Section 6 of Article 5 of the State Constitution in denying an appeal from the District Court.

With reference to the provision of the Act stating that in the event the Supreme Court of this State should declare the Act unconstitutional for immediate effect, then the Act shall be considered an an enabling act in support of the Amendment of the Constitution as proposed in S. J. R. No. 7. It seems well established that if an act is unconstitutional in the beginning it cannot be validated by a subsequent adoption of a Constitutional Amendment.

On January 28, 1927, reports and opinions of the Attorney General, 1926-28, page 375, that department held that the Legislature of Texas is without authority to enact a law to become effective only in the event of certain constitutional amendment being adopted. Such a law would be unconstitutional and void. If the opinion of that department has been overruled by the Courts, I have been unable to find any such decision.

It is apparent that the said S. B. No. 197 is unconstitutional for the reasons stated.

The Legislature has submitted a Constitutional Amendment to be voted on by the people August 25 which, if adopted, will accomplish the purposes of Senate Bill No. 197. The Amendment is self-enacting, and the Legislature, by its action, has recognized that the proper way to amend the Constitution is to submit the proposed Amendment to a vote of the people. I think the people have demonstrated time and again that they want this State run according to the Constitution.

Senate Bill No. 197 reached my office less than ten days before the end of the Regular Session of the Forty-ninth Legislature.

In accordance with the Constitution, it is being filed with the Secretary of State together with this proclamation containing my objections to the bill.

IN TESTIMONY WHEREOF I have hereunto signed my name officially and caused the Seal of State to be affixed hereto at Austin, this the twentieth day of June, A. D., 1945.

Coke R. Stevenson
GOVERNOR OF TEXAS

BY THE GOVERNOR:

Claude Isbell
SECRETARY OF STATE